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The provision of Ambulance Services in Australia: a legal argument for the national registration of paramedics

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Introduction

This paper identifies that there is a growing private ambulance sector, notwithstanding legislative prohibitions on the provision of ambulance services that exist in nearly all Australian State and Territories. Notwithstanding these prohibitions, there appears to be no intention to prosecute private ambulance providers and, indeed, governments probably appreciate that these services fill a need and reduce the demand for non-emergency services on state run ambulance services.

The paper will define what is meant by ambulance services and describes what is prohibited in each Australian jurisdiction and then argue that, to ensure that the providers of ambulance services continue to deliver a quality service to the public, there should be a legally sanctioned system to register paramedics and the use of various titles associated with the prehospital sector must be restricted.

Background

Training for paramedics has transitioned from on the job training provided by State and Territory ambulance services to vocational qualifications and, more recently, higher education (University) sector qualifications. There are now a range of qualifications relevant to the prehospital sector. Vocational qualifications include Certificate II in Emergency Medical Service First Response, Certificate III in Basic Health Care, Certificate III in Non-Emergency Client Transport, Certificate IV in Health Care (Ambulance), Diploma of Paramedical Science (Ambulance) and Advanced Diploma of Paramedical Science (Ambulance).[1] There is also a significant number of University providers awarding qualifications leading to employment as a paramedic.[2,3]

Even with the growth in paramedic training, it remains the case that ambulance services and in particular, emergency ambulance services, are provided almost exclusively by government operated statutory authorities (Table 1).[4-9] In most jurisdictions, it is an offence to provide a non-government ambulance service without official approval.[4-9]

Table 1. Government operated statutory authorities providing ambulance services

Ambulance Service	**Legislation**
ACT Ambulance Service	*Emergencies Act 2004* (ACT)[4]
Ambulance Service of NSW	*Health Services Act 1997* (NSW)[5]
Queensland Ambulance Service	*Ambulance Service Act 1991* (Qld)[6]
The SA Ambulance Service Inc	*Health Care Act 2008* (SA)[7]
Tasmanian Ambulance Service	*Ambulance Service Act 1982* (Tas)[8]
Ambulance Victoria	*Ambulance Services Act 1986* (Vic)[9]

In addition to the State and Territory provided ambulance services there is a growing private prehospital care industry.[10-19] This private sector is very heterogeneous with levels of services ranging from first aid to intensive care paramedic services. It is foreseeable, if not already the case, that the supply of graduates from paramedic programs will exceed positions available within State and Territory ambulance services leading to graduates seeking employment within the private sector. Additionally there may be graduates from tertiary programs who do not want to work in the State or Territory ambulance services but who may seek to be employed within the private sector.

What are 'ambulance services'?

In most Australian jurisdictions 'ambulance services' involve two separate, but related components. They are:

a) the provision of pre-hospital emergency care and;

b) the transport of the sick or injured.

In New South Wales, Tasmania, Queensland and the Australian Capital Territory, ambulance services are services that relate to the provision of first aid,[5,8] medical treatment,[4] emergency treatment[6] and/or other pre hospital care to, and the transport[4] of, the sick and injured.[5,6,8, i]

An Ambulance Service established under Victorian law[9] is required to:

(a) respond rapidly to requests for help in a medical emergency;

(b) provide specialised medical skills to maintain life and to reduce injuries in emergency situations and while moving people requiring those skills;

(c) provide specialised transport facilities to move people requiring emergency medical treatment;

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[i] *Health Services Act 1997* (NSW) Dictionary pt 1 (definition of 'ambulance services');
Ambulance Service Act 1982 (Tas) s 3 (definition of 'ambulance services');
Ambulance Services Act 1991 (Qld) Dictionary (definition of 'ambulance service');
Emergencies Act 2004 (ACT) s 60 (definition of 'ambulance services');

(d) provide services for which specialised medical or transport skills are necessary;

(e) to foster public education in first aid.[ii]

These legislative provisions do not suggest that the key or essential part of providing 'ambulance services' is patient transport. Providing first aid or emergency medical care is providing 'ambulance services' whether or not that care is associated with patient transport.[20] What follows is that an organisation that offers to provide on-site paramedics who provide prehospital care (at least in New South Wales, Tasmania, Queensland and the Australian Capital Territory) is providing 'ambulance services' regardless of whether or not they transport the patient either on site or to a public hospital.

The situation in those jurisdictions can be contrasted with the legal position in South Australia, the Northern Territory and Western Australia. In South Australia the term 'ambulance service' means "… the service of transporting by the use of an ambulance a person to a hospital or other place to receive medical treatment or from a hospital or other place at which the person has received medical treatment."[7,iii] It follows that the critical service offered by an ambulance service in South Australia is patient transport. A service that provides on site pre-hospital medical care but does not transport the patient to 'a hospital or other place to receive medical treatment' is not providing an ambulance service.

In the Northern Territory and Western Australia the provision of ambulance services is not regulated by legislation so there is no legal definition of what constitutes ambulance services. In those jurisdictions regard may be had to the dictionary definition of what an 'ambulance' is. An ambulance is "a vehicle equipped for taking sick or injured people to and from hospital"[21] therefore in those jurisdictions, ambulance services must be the service of providing patient transport to or from a hospital.

Accordingly in South Australia, and arguably in the Northern Territory and Western Australia, what distinguishes ambulance services from other prehospital services is the provision of patient transport to and from hospital. In those jurisdictions a private company that is providing on site prehospital care, including on site transport, but that does not provide patient transport to or from a hospital, is not providing ambulance services.

Is it an offence to provide non-approved ambulance services?

With the exception of the Northern Territory and Western Australia, ambulance services are provided by the government ambulance service (Table 1).[4-9] It is an offence to provide a private ambulance service without the permission of the relevant Director-General or Minister. Exactly what is prohibited varies from jurisdiction to jurisdiction.

One private prehospital care provider, in New South Wales, interprets the position this way:

> "We can arrange to have an ambulance on-site at your event or site but all transport to care outside of the event or site will be provided by the state ambulance provider. It is an offence, for example, under the *Health Services Act* (NSW) 1997 to provide transport of sick or injured persons for fee or reward."[22]

[ii] *Ambulance Services Act 1986* (Vic) s 15.

[iii] *Health Care Act 2008* (SA) s 3 (definition of 'ambulance service'). An ambulance is a "vehicle that is equipped to provide medical treatment or to monitor a person's health and that is staffed by persons who are trained to provide medical attention during transportation"; ibid. See also *Police v Zammit* [2007] SASC 37.

Whilst it may be reasonable to infer that the prohibition on the provision of ambulance services is intended to prohibit the provision of emergency ambulance services to the public at large and the transport of patients from an accident site to a public hospital, that is not how the prohibitions are phrased.

In Victoria, it is prohibited to use the word 'ambulance' or to use prescribed insignia that suggest that the provider is affiliated with Ambulance Service-Victoria;[9,iv] it follows that a private provider can provide ambulance services provided they do not actually use the title 'ambulance'. In Queensland and South Australia it is illegal to provide unauthorised patient transport services.[6,7,v] In Victoria and South Australia, however, there is a licensing scheme to allow private providers to deliver non-urgent patient transport services.[7,9]

In the Australian Capital Territory it is an offence to provide ambulance services, that is pre-hospital care and transportation,[4] without the approval of the Minister. The prohibition does not apply to 'an entity in relation to the provision of first aid'[4,vi]. What constitutes 'first aid' is not defined.

The prohibitions are broadest in New South Wales and Tasmania. In those jurisdictions it is an offence for a non-exempt organisation to provide, for fee or reward, transport for sick or injured persons or to conduct "any operations similar to the operations" of the state Ambulance Service without the approval of the Director General.[5,8,vii] The state Ambulance Services will, for a fee, attend and provide emergency medical care at an event or sporting fixture.[23] It follows that the provision of on-site prehospital services is providing a service similar to that provided by at least the New South Wales Ambulance Service and is therefore prohibited.[5]

This issue was considered in *Paramedical Services Pty Ltd v The Ambulance Service of New South Wales.*[20] This was an action where Paramedical Services Pty Ltd alleged that the Ambulance Service was engaging in false and misleading conduct when officers from the Service advised the Confederation of Australian Motor Sports that Paramedical Services Pty Ltd could not lawfully provide ambulance services and that their employees could not act as paramedics outside their employment with the Ambulance Service of New South Wales. Paramedical Services Pty Ltd had an authority to carry and administer appropriate medications but no permission had been granted to operate an ambulance service.[20]

In order to decide whether the advice given by the Ambulance Service was false or misleading, Justice Hely had to determine what services were being provided and whether or not the provision of those services was prohibited by the *Ambulance Service Act 1974* (NSW).[24] The 1974 Act contained a prohibition that was, effectively, in the same terms as the prohibition contained in the current *Health Services Act.*[5] Justice Hely found that:

> "… where a person is injured at such an event, the usual practice is for the on-site ambulance and staff to stabilise the patient at the scene of the accident. If there is an on-site medical centre or sick bay the patient may be transported there by the on-site ambulance. The standard procedure then is to call for an ambulance provided by the NSW Ambulance Service which then transports the injured person to hospital. The on-

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iv *Ambulance Services Act 1986* (Vic) s 39.

v *Ambulance Service Act 1991* (Qld) s 43;
Health Care Act 2008 (SA) ss 57 and 58.

vi *Emergencies Act 2004* (ACT) s 63.

vii *Health Services Act 1997* (NSW) s 67E;
Ambulance Service Act 1982 (Tas) s 37.

> site ambulance and paramedical staff then remain at the sporting venue to deal with any possible further emergency."[20,viii]

Paramedical Services Pty Ltd argued that these services were not ambulance services because:

> ... The provision of an ambulance and paramedics at a sporting fixture is not a service "relating to" the work of rendering first aid to, and the transport of, sick and injured persons, because, so it was submitted, no one may become sick or injured.[20,ix]

Justice Hely rejected this argument. He concluded that the provision of event prehospital care and patient transport, even if that transport is limited to transportation around the event site, for example from a first aid post to a medical centre, was the provision of ambulance services[20,x] and was, therefore, illegal without appropriate approval. The implied assertion[22] that private providers cannot provide transport on public roads, to and from hospital, but may lawfully provide on site transport is inconsistent with the legislative provisions and the interpretation given to those provisions in this case.

In New South Wales organisations that are exempt from the prohibition of the provision of ambulance services are St John Ambulance Australia (NSW), the Royal Flying Doctor Service (NSW Section), a mines rescue company, the Mines Rescue Brigade[5] and the NSW Newborn & Paediatric Emergency Transport Service operated by the Sydney West Area Health Service.[25] Advice from NSW Health is that no other approval has been granted by the Director General of Health.

The various health departments must be aware that there are private prehospital care providers and that, at least in New South Wales, Tasmania, Queensland and the Australian Capital Territory, they are providing ambulance services and are therefore acting contrary to the legislated prohibitions. Governments appear to tolerate these activities and many of the private sector providers have government authority to carry and administer medications that are used in prehospital care. The effect is that a number of people and organisations are authorised to carry and use medications for the provision of first aid or transport of the sick and injured[26] even though the provision of those services (in NSW) is prohibited.[5]

Is there room for competition in the ambulance sector?

The growing number of vocational and university graduates with paramedic qualifications must increase the pressures to free up the ambulance sector to allow private providers in both emergency and on-site prehospital care.

Despite the existence of multiple private providers of ambulance services their ability to operate legally is, at best, unclear. Where private providers offer to provide on-site paramedic services they are in direct competition with the state based ambulance authorities that also provide on-site services for a fee.20[20] Australian governments are committed to principles of competitive neutrality.[27] The aim of the competition principles is to ensure that government agencies do not enjoy, by virtue of their position as government agencies, significant competitive advantage over private service providers.[27] It could be argued that the statutory prohibitions on the provision of ambulance services gives the State and Territory authorities a market advantage by giving them a de facto monopoly position on the provision of ambulance services.

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viii *Paramedical Services Pty Ltd v The Ambulance Service of New South Wales* [1999] FCA 548, [21].

ix Ibid [34].

x Ibid [36].

This monopoly position might have been justified, for the public benefit,[27] when the State and Territory Ambulance Services were the only organisations that could train people to be paramedics and there was a legitimate concern with the '… dangers in permitting private operators to develop paramedic services in the absence of suitable performance indicators and quality controls."[20] With paramedic training (in large part) now being provided according to accredited national standards and by Universities that deliver courses that are accredited by the Convention of Ambulance Authorities,[28] there should be confidence that suitably qualified paramedics have sufficient training and ability to provide competent prehospital care.

The need for professional registration

The reality of vocational and university qualifications for paramedics needs to be addressed by the law. There is great diversity in the terms used to describe providers of ambulance and on site prehospital care services. Within the private sector these include (but are not limited to) first aider, first responder, advanced responder, emergency medical technician (EMT), EMT – Basic, EMT-Intermediate, EMT-Paramedic, Paramedic, Intensive Care Paramedic, Advanced Life Support Officer and Medic. There is an attempt to establish a private Australasian Registry of Emergency Medical Technicians[29] but this registry has no legal status or authority. Under current Australian law none of these titles are defined nor are there any prescribed qualifications that are required before a person can adopt one of them. There is no law that would stop a person with a first aid certificate issued after a weekend course calling him or herself a 'paramedic' and establishing a private company called '*Emergency Prehospital Care Services Pty Ltd*'.

There may be issues under Fair Trading or Trade Practices legislation if a person adopts a title that is misleading or deceptive but actions under this legislation will focus on the question of whether or not someone was or could have been misled. It will not hold a service provider accountable for the standard of care provided and will be of little consolation for people who receive sub-optimal care.

A legal solution that may go some way to resolving these issues, and which has been discussed elsewhere in this journal,[30] is a process of registration of paramedics and other prehospital care providers, with an associated restriction on the use of various titles.

A system of registration, and with it regulation, would go a long way to removing barriers to a private ambulance profession. Once paramedics can be registered as independent health professionals the relevant quality standards to ensure that they maintain their skills could be established by the registration authority. This would address concerns about the "… absence of suitable performance indicators and quality controls.[20] Once those concerns are adequately addressed, Australian health departments and governments would be hard pressed to refuse permission for qualified paramedics to practice their profession as they see fit, which could be as employees of state ambulance authorities or in the private sector.

Registration would make it easier for paramedics to access the equipment and in particular medications, that they require to practise their profession. In New South Wales, for example, ambulance officers employed by the Ambulance Service of New South Wales can carry schedule 2, 3, 4 and 8 medications when acting as an employee and in accordance with an approval from the Director-General of the Department of Health.[31] If they resign from the Ambulance Service of New South Wales or wish to work a second job with a private ambulance service, their authority to carry and use the necessary medications will not continue. The private provider is required to seek further authority to carry and use appropriate medications. If paramedics were registered, then authority could be given to

registered paramedics, in the same way it is given to nurses, doctors, dentists and other registered health professionals and would enable them to move between employers.

Another benefit of registration is that titles could be reserved and restricted so that people could not call themselves a paramedic unless they were duly registered. As the law currently stands, anyone could adopt those titles for themselves. Event organisers and people seeking assistance may well go to a first aid post expecting one level of care, and receive something less with nothing to indicate, in a meaningful way, what level of care they can expect. In contrast if one sees a person with a tabard that says 'Nurse' or 'Doctor' then one can have a reasonable expectation that the person wearing that tabard is a registered, qualified and competent health professional with appropriate quality assurance mechanisms in place to hold them accountable if the care they provide is less than competent. Similar certainty should exist for a person receiving care from a 'paramedic'.

A prohibition to ensure that only people who are registered as 'paramedics' or the like can use the title would ensure that patients can be confident they are being treated by appropriately qualified professionals and event organisers would be better able to make an informed choice as to who would be a reasonable supplier of prehospital care services at their event. The mapping of titles to qualifications and competencies will be an important component of any registration framework but this issue is beyond the scope of this paper.

Conclusion

This paper has reviewed relevant aspects of the law dealing with the provision of ambulance services in Australia. It has been noted that, outside South Australia, Western Australia and the Northern Territory, the definition of ambulance services is not the transportation of patients to or from a hospital. The provision of prehospital care is an ambulance service with the result that many organisations are providing ambulance services in this broader sense, notwithstanding the legislative prohibitions. Exactly what is prohibited is not clear and the enforcement of these prohibitions is virtually unheard of. This analysis has identified that the law has failed to keep up with changes in paramedic practice and education.

The current situation in no way protects patients from sub-optimal care. Notwithstanding the prohibitions, private ambulance services do exist but they are effectively unregulated. Anyone can adopt a title or claim to be able to provide prehospital care without any formal certification or accreditation.

The law should be used to exclude conduct that should be prohibited and to support and encourage desirable outcomes. The current prohibitions are not enforced and it is clear that the existence of private ambulance services is tolerated. In this sense the law does not reflect current policy. Equally the toleration of private ambulance services, in the absence of registration, does not protect patients or promote the recognition of the qualifications and associated skills of those delivering care.

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